



**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON THE CALIFORNIA CUSTOMER CHOICE PROJECT: DRAFT GAP  
ANALYSIS/CHOICE ACTION PLAN AND OCTOBER 29<sup>TH</sup> *EN BANC*  
November 13, 2018**

**I. INTRODUCTION**

The Alliance for Retail Energy Markets<sup>1</sup> (“AReM”) is pleased to provide these comments on the *California Customer Choice Project: Draft Gap Analysis/Choice Action Plan* (“GAP/CAP”) dated October 23, 2018, and the follow-up *en banc* hearing held on October 29. AReM is eager to see the California Customer Choice Project reach fruition in terms of providing the full spectrum of market participants – customers, utilities, community choice aggregators (“CCAs”) and electric service providers (“ESPs”) – well-designed market rules and regulations that provide consumers with the ability to manage their energy use efficiently, take advantage of innovative new ideas and products that better their lives, while continuing on a path of increasing decarbonization.

As requested by the Commission Staff that has worked to compile the GAP/CAP, these comments are intended to provide additional feedback to those provided at the *en banc* on the critical issues related to greater retail choice. As such, these comments focus primarily on problems associated with the central buyer concept and retail choice, provider of last resort (“POLR”) service, consumer protection, and time-of-use (“TOU”) rates.

Finally, because there is direct nexus between the Consumer Choice Project and Senate Bill (“SB”) 237 that provides for a limited expansion of the DA cap, AReM also provides a recommended approach for SB 237 implementation.

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<sup>1</sup> AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

AReM looks forward to continuing to work with the Commission, the California Energy Commission and other energy agencies and stakeholders to implement the transition to increased retail customer choice in California.

## **II. COMMENTS ON CENTRAL BUYER MECHANISMS TO ENSURE RELIABILITY AND DECARBONIZATION**

The following statement is made in the in the GAP/CAP analysis:

Retail competition is intended to use market competition forces to lower costs for consumers. However, the Legislature has competing goals to foster decarbonization of the economy through directed regulations, such as the RPS and IRP. The tension between utilizing markets to achieve lower costs and state-based policy initiatives designed to foster decarbonization has to be harmonized; at the present time, the multiple state policy objectives of efficiency of markets vs. decarbonization appear to conflict with each other on a practical, implementation level.<sup>2</sup>

While AReM is encouraged to see the statement regarding how market forces will lower costs for consumers, AReM does not agree that efficient markets will impede decarbonization, or that RPS mandates (as well as energy storage, RA, or IRP requirements, for that matter) that are part and parcel of California's plans for decarbonization cannot or will not be achieved if retail choice is expanded. Quite the opposite; people and businesses in California are solidly behind decarbonization and providing them more choices on how to achieve it can only expedite the desired process. Allowing competitive market forces to work will be beneficial, not detrimental, to meeting the state's goals.

However, the Commission seems much more inclined to move in the direction of "central buyer" procurement for resource adequacy and preferred resources rather than allowing customers to select the procurement that best suits their environmental preferences and budgets, consistent with meeting established mandates. It cannot be stated strongly enough, however, that the central buyer concept, already embedded in Commission policy through the Cost Allocation Mechanism ("CAM"), is the antithesis of customer choice, and yet it continues to grow:

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<sup>2</sup> GAP/CAP, page 49.

- CAM procurement by the utilities will total more than 8,500 MW by August 2020.<sup>3</sup>
- The “automatic limiter” – put in place to limit the amount of energy storage that ESPs must procure to meet their energy storage mandate based on equitable procurement between LSEs relative to load – has been triggered in each of the three Investor-Owned Utility (“IOU”) territories. .
- Utility procurement of renewables, initially always considered outside the CAM purview, are also being afforded CAM treatment, as was the case with preferred resource procurement by Southern California Edison (“SCE”) in replacing the output from the San Onofre Nuclear Generating Station (“SONGS”)

Instead of mandating procurement driven by the decisions of one entity, allowing all LSEs the flexibility to procure on their own will lead to innovative solutions and/or cost savings while meeting the needs of their specific customers. Using a central buyer to procure resources needed to meet the desired and required decarbonization levels should only rarely be needed and should only be undertaken when there is conclusive data showing either that critical products are needed that the market cannot provide or that a central buyer approach will procure them in the most efficient and cost-effective manner.

Rather than focusing on how to implement a more stringent central buyer mechanism, the Commission must turn its attention to implementing and supporting market mechanisms that allow customers and their suppliers to develop products and services that meet the mandates, rather than having those products and services forced on them. Toward that end, the Commission should set aside its predilection to simply dismiss the concept of a centralized clearing capacity market out of fear of too much FERC jurisdiction, and find ways to work more cooperatively to implement such a structure. Without it, customers’ creativity and the ability to manage their costs through choice will be severely and irreparably constrained in ways that will stifle innovation and efficiency. One just needs to look and the growingly complex RA requirements and program modification proposals to see how a capacity market would simplify and more efficiently procure the necessary reliability resources. The role for on-behalf-of

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<sup>3</sup> *Current Trends in California’s Resource Adequacy Program*, Energy Division Working Draft Staff Proposal, R.17-09-020, February 16, 2018, p. 19.

procurement through CAM or any other central buyer approach, or other forms of backstop procurement should be limited to genuine exigent circumstances.

Finally, the GAP/CAP report notes that “some LSEs have relied on short-term contracts to meet energy needs.”<sup>4</sup> Indeed, ESPs whose load is fully contestable (unlike IOUs), do indeed strive to manage their risks by keeping their contractual commitments in line with the duration of the commitment obtained from their customers. As the long-term contracting requirements applicable to RPS become effective in 2021, and if the forward procurement of RA requirements is implemented, ESPs will comply with those new requirements and look for new ways to work with their customers to manage those new risks.

### **III. COMMENTS ON PROVIDER OF LAST RESORT SERVICE**

The GAP/CAP analysis<sup>5</sup> and the preponderance of comments at the October 29 *en banc* acknowledge the need for a POLR service provider. However, the GAP/CAP analysis focuses predominantly on POLR as a service necessary when retail choice providers fail. But POLR also represents a supply service that stands ready to provide service to customers who do not want or cannot choose an alternative competitive supplier and in the extremely rare instances that an alternative competitive supplier defaults on its obligation and leaves its customers with no service provider. Fortunately, as has been discussed throughout the Customer Choice Project deliberations, there are several different POLR models, all of which can work well to ensure continued service to customers, whether that service is needed in the event a retail supplier fails or otherwise. While the models can differ in detail, they all share common attributes:

- Incumbent utilities that served load under cost of service models are assured recovery of the costs they incurred prior to a transition to POLR service.
- All retail choice providers, including POLR providers, secure their supply from the wholesale markets; wholesale suppliers manage the long-term risks of needed investments. Customers are not on the hook for those risks, and suppliers are not assured recovery of stranded costs that their investment decisions may create.

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<sup>4</sup> GAP/CAP, page 5.

<sup>5</sup> GAP/CAP, pages 21-23.

- In most cases, POLR providers procure their supply through structured auctions or requests for proposals (RFPs) that lead to contracts for specific time durations. These arrangements ensure the POLR supply remains reflective of wholesale market prices and affords some level of fixed price protection for the load being served.
- Customer choice is not inhibited by the POLR service. Customers are free to come and go from POLR service to competitive retail supply. The winning suppliers in the POLR procurement auctions or RFPs are responsible for managing the risk of customer migration to and from POLR service.
- The incumbent utilities often, but not always, serve as the POLR provider. They do remain the owners of the transmission and distribution systems.

Within these attributes, there are a wide range of market design rules – including the length of time each load auction or RFP covers, whether there should be limits on how much POLR load any one entity can serve, translating the POLR auction prices into rates charged to POLR Customers, appropriate compensation to the POLR provider – that remain within the jurisdiction of state regulators. There are numerous examples of jurisdictions that addressed these market design issue in collaborative stakeholder initiatives.

#### **IV. COMMENTS ON CONSUMER PROTECTION ISSUES**

AReM agrees with the GAP/CAP analysis and the discussion during the *en banc* that there must be effective consumer protections that prevent, and punish if necessary, predatory sales practices.

AReM notes and appreciates that the GAP/CAP states that “slamming and cramming” have not been an issue with respect to ESPs.<sup>6</sup> It is concerning, then, that the report specifically lists ESPs as entities for which predatory sales tactics are a particular concern.<sup>7</sup> AReM, as noted herein, supports effective consumer protections, but does respectfully request that the GAP/CAP report describe the need for consumer protections in a way that is more balanced to the consumer

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<sup>6</sup> GAP/CAP, page 24.

<sup>7</sup> GAP/CAP, pages 7, 24 and 75.

violations that have occurred – which, in the case of ESPs to date as stated by the GAP/CAP, has not been an issue.

## **V. COMMENTS ON THE USE OF TIME-OF-USE RATES**

In the GAP/CAP analysis,<sup>8</sup> and at the October 29 *en banc* meeting, there has been discussion of the role that TOU rates play in incentivizing energy conservation behavior among all classes of customers, and raising the question as to whether CCAs should be required to implement and charge their customers based on TOU rate structures.<sup>9</sup>

All customers, whether bundled, CCA, or DA, should have the ability to select services that help them manage those risks, including demand response programs and the ability to select fixed pricing instead of TOU rates. Allowing customers to select alternative pricing does not negate the behavior incentives associated with TOU rates; rather it means that customers have taken the time to learn and appreciate what makes energy pricing volatile, and consciously select tools to manage that volatility.

The ability to make conscious energy choices is fundamental to DA, and DA customers are sophisticated in their energy management practices. Customers on DA evaluate and then select the pricing that works best for them. They can choose indexed (real time) pricing if they are willing to be exposed to real time pricing. And if they choose not to, then they can select the quantity and time duration of fixed pricing that they desire, which includes a cost component associated with using electricity during high-cost hours.

## **VI. IMPLEMENTATION OF SB 237**

SB 237, enacted on September 20, 2018, provides for a limited expansion of the existing DA cap. Therefore, the task of implementing the legislation has a clear nexus with the Consumer Choice Project. The initial DA expansion, by law, must be accomplished by June 1, 2019. In addition, SB 237 requires the Commission to provide recommendations to the Legislature to implement further reopening of direct access for nonresidential customers by June 1, 2020.

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<sup>8</sup> GAP/CAP, pages 37-38.

<sup>9</sup> GAP/CAP, page 38.

AReM believes that a quick and efficient process for implementing SB 237 would be to do so in the same manner as that of Senate Bill 695, the 2009 legislation that last expanded DA. Specifically, AReM recommends that the Commission reopen Rulemaking 07-05-025, the proceeding in which the SB 695 expansion was addressed, by issuing an Assigned Commissioner Ruling (“ACR”) that specifies the Commission intends to implement SB 237 by modifying D.10-03-022 to (1) allocate the 4,000 GWh added by SB 237 *pro rata* to the existing IOU’s DA caps established in D.10-03-022 and (2) apply the existing waiting list process to fill the expanded caps. The ACR would further specify that a final decision would be approved no later than March 28, 2019. Parties would be afforded the opportunity to file comments and reply on the ACR, after which a proposed decision would be issued specifying the required revisions to D.10-03-022. The process of developing the recommendation to the Legislature on further reopening of direct access could be accomplished in a new phase of that docket, or within a phase of a formal proceeding in connection with the Consumer Choice Project, so long as the recommendations can be developed and submitted by the June 1, 2020 statutory deadline.

## **VII. CONCLUSION**

AReM appreciates the opportunity to submit these comments and looks forward to continuing to work with the Commission, Staff and stakeholders on these important issues.